

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 9

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO HEALTH; ENACTING THE HEALTH CARE REGISTRY ACT;  
ESTABLISHING A REGISTRY OF EMPLOYEES WHO HAVE COMMITTED ABUSE,  
NEGLECT OR MISAPPROPRIATION OF PROPERTY; MAKING AN  
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Health Care Registry Act".

Section 2. DEFINITIONS.--As used in the Health Care  
Registry Act:

A. "abuse" means the willful infliction of injury,  
unreasonable confinement, intimidation or punishment with  
resulting physical harm, pain or mental anguish;

B. "department" means the department of health;

C. "employee" means a person employed or contracted

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1 to provide services to persons who are developmentally  
2 disabled, physically disabled or elderly, including a personal  
3 care attendant funded through the medicaid program;

4 D. "misappropriation of property" means the  
5 deliberate misplacement, exploitation or wrongful, temporary or  
6 permanent use of a resident's belongings or money without the  
7 resident's consent;

8 E. "neglect" means the failure to provide goods and  
9 services necessary to avoid physical harm, mental anguish or  
10 mental illness;

11 F. "provider" means an agency or organization,  
12 excluding a managed care organization unless the employees of  
13 the managed care organization provide respite care, deliver  
14 home and community-based services to adults or children with  
15 developmental disabilities or physical disabilities or to the  
16 elderly, including intermediate care facilities for the  
17 mentally retarded;

18 G. "registry" means the "health care registry"; and

19 H. "secretary" means the secretary of health.

20 Section 3. REGISTRY OF EMPLOYEES WHO HAVE COMMITTED  
21 ABUSE, NEGLECT OR MISAPPROPRIATION OF PROPERTY.--

22 A. The department shall establish a "health care  
23 registry" of employees who have committed abuse, neglect or  
24 misappropriation of property as determined by the department  
25 pursuant to the Health Care Registry Act.

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1           B. Before a provider hires or contracts with an  
2 employee, the provider shall inquire of the department whether  
3 the employee is included in the registry.

4           C. When the department receives an inquiry  
5 regarding whether the employee is included in the registry, the  
6 department shall inform the provider whether the employee is  
7 included in the registry.

8           D. Providers that hire employees shall maintain  
9 documentation demonstrating that they have checked the registry  
10 for each applicant being considered for employment.

11           E. A provider shall not hire or contract with an  
12 employee in a direct care setting who is included in the  
13 registry.

14           F. A division of the department or other  
15 governmental agency funding services to the developmentally  
16 disabled, physically disabled or elderly or contracting for the  
17 personal care attendant option of the medicaid program may at  
18 its discretion not enter into or renew a contract with a  
19 provider that fails to comply with the provisions of Subsection  
20 E of this section.

21           G. A provider that reports allegations of abuse,  
22 neglect or misappropriation of property or that fails to hire  
23 or retain an employee because the employee is included in the  
24 registry is presumed to be acting in good faith and shall be  
25 immune from liability for both civil and criminal damages that

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1 might otherwise be incurred or imposed by law, unless the  
2 provider acted in bad faith or with malicious purpose in a  
3 civil action brought by the employee or applicant for  
4 employment.

5 H. After a period of five years an employee placed  
6 on the registry may petition the department for removal of the  
7 employee's name from the registry. Petitions for removal shall  
8 be in writing and mailed or hand-delivered to the department.

9 I. The department shall promulgate rules as  
10 necessary to carry out the provisions of the Health Care  
11 Registry Act.

12 Section 4. REVIEW OF REPORT OF ABUSE, NEGLECT OR  
13 MISAPPROPRIATION OF PROPERTY--HEARING--PHASE IN OF PROVIDERS IN  
14 THE REGISTRY.--

15 A. In addition to other actions required by law,  
16 the department shall review each report it receives of abuse,  
17 neglect or misappropriation of property of a person who is  
18 developmentally disabled, physically disabled or elderly being  
19 served by providers. The department shall review the reports  
20 of abuse, neglect or misappropriation of property that involves  
21 employees of providers that it receives from the children,  
22 youth and families department or a protective services agency.

23 B. The department shall investigate all allegations  
24 to determine whether there is a reasonable basis for abuse,  
25 neglect or misappropriation of property.

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1 C. If the department determines that abuse, neglect  
2 or misappropriation of property has occurred, the employee and  
3 the provider shall be notified by mail of the following:

4 (1) the nature of the determination of the  
5 abuse, neglect or misappropriation of property;

6 (2) the date and time of the occurrence;

7 (3) the employee's right to a fair hearing;

8 (4) the department's intent to report the  
9 substantiated findings, once the employee has had the  
10 opportunity for a hearing, to the registry; and

11 (5) that the employee's failure to request a  
12 hearing in writing within thirty days from the date of the  
13 notice shall result in the department's reporting substantiated  
14 findings to the provider that employs the implicated employee  
15 and to the registry.

16 D. The department shall phase in the registry as  
17 follows:

18 (1) employees of providers to adults and  
19 children with developmental disabilities by July 1, 2004;

20 (2) employees of providers to adults and  
21 children with physical disabilities and providers to the  
22 elderly by July 1, 2005; and

23 (3) employees of personal care attendants  
24 funded through the medicaid program by July 1, 2006.

25 Section 5. APPROPRIATION.--Fifty thousand dollars

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1 (\$50,000) is appropriated from the general fund to the  
2 department of health for expenditure in fiscal year 2005 and  
3 subsequent fiscal years to administer a registry of employees  
4 who have committed abuse, neglect or misappropriation of  
5 property of the developmentally disabled, physically disabled  
6 or elderly pursuant to the Health Care Registry Act. Any  
7 unexpended or unencumbered balance remaining at the end of a  
8 fiscal year shall not revert to the general fund.

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